



ITA No.5041-42/Mum/2018

Shri Vipul C.Doshi

Assessment Years 2010-11 & 2011-12

आयकर अपीलीय अधिकरण “एक-सदस्य मजमल” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

मजनीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.5041/Mum/2018
(निर्धारण वर्ष / Assessment Year:2010-11)

&

आयकरअपील सं./ I.T.A. No.5042/Mum/2018
(निर्धारण वर्ष / Assessment Year:2011-12)

Income tax Officer Ward-3(4), Kalyan, 2 nd Floor, Rani Mansion Murbad Road, Kalyan (W)-421 301.	बनाम/ Vs.	Shri Vipul C. Doshi [Prop. Of M/s. VIP Industries] 2-B, New Vikas Builders, K.D. Agarwal Hall Dombivali (E) Mumbai-421 201.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAQPD-2795-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Akhtar H. Ansari-Ld.DR
Assessee by	:	Shri Vishwas Mehendale-Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	16/09/2019
घोषणा की तारीख / Date of Pronouncement	:	16/09/2019

आदेश / ORDER

Per Bench: -

1. Aforesaid appeals by revenue for Assessment Years [AY] 2010-11 & 2011-12 contest common order of Ld. Commissioner of Income-Tax (Appeals)-1, Mumbai, [in short referred to as ‘CIT(A)’], ITA Nos.956, 957 &



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958/14-15 dated 20/06/2018. The grounds raised in AY 2010-11 reads as under: -

Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) was justified in not appreciating the law correctly that once the purchases are unverifiable/not genuine/ bogus, the same should have been disallowed in entirety?

We have heard and considered the arguments advanced by both the representatives.

2.1 Facts for AY 2010-11, in brief, are that the assessee being resident individual stated to be engaged in trading of electrical goods & hardware items under proprietorship concern namely M/s V.I.P. Industries, was assessed for impugned AY u/s. 143(3) r.w.s. 147 on 13/02/2015 wherein the income of the assessee was determined at Rs.15.73 Lacs, *inter-alia*, after addition of *alleged bogus purchases* for Rs.12.45 Lacs as against returned income of Rs.2.98 Lacs e-filed by the assessee on 12/08/2010 which was processed u/s.143(1).

2.2 Pursuant to receipt of certain information from investigation wing / Sales tax Department, Govt. of Maharashtra, it transpired that the assessee stood beneficiary of alleged bogus purchases to the tune of Rs.12.45 Lacs from 10 entities, the details of which have already been tabulated at para-3 of the quantum assessment order. Accordingly, as per due process of law, re-assessment proceedings were initiated against the assessee u/s 147 by issuance of notice u/s 148 on 09/05/2013. The statutory notices u/s 143(2) & 142(1) were issued in due course wherein the assessee was directed to substantiate the purchase transactions.



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2.3 Although, the assessee defended the purchases, however, notices issued u/s 133(6) to all the suppliers remained unserved as well as un-responded to. The assessee failed to substantiate delivery of material and also failed to produce any of the suppliers to confirm the stated transactions which led the Ld. AO to believe that the assessee remained unsuccessful in discharging the onus casted upon him, in this regard. Consequently, the books were rejected u/s 145(3) and the said purchases were added to the income of the assessee. The learned appellate authority, applying the provisions of Section 44AF, estimated assessee's income @5% of the turnover. The stand of first appellate authority reduced the assessed income from Rs.15.73 Lacs to Rs.6.69 Lacs. Aggrieved, the revenue is in further appeal before us. It appears that the assessee has not preferred any further appeal.

3. We are of the considered opinion there could be no sale without actual purchase of material keeping in view the assessee's nature of business i.e. trading. The assessee was in possession of primary purchase documents and the payments to the supplier was through banking channels. However, at the same time, the assessee miserably failed to substantiate the purchases during assessment proceedings. Notices issued u/s 133(6) remained un-responded to in all the cases. The assessee failed to prove the delivery of material. Under such circumstances, the additions which could be sustained, was to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT



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against such bogus purchases. The learned first appellate authority, keeping in view the entirety of factual matrix, estimated the income on presumptive basis i.e. 5% of the turnover. The said estimation, in our considered opinion, is quite fair and reasonable under the circumstances keeping in view the assessee's nature of business. When the income has been estimated on presumptive basis, no further addition would be warranted on account of alleged bogus purchases. Therefore, concurring with the approach of learned first appellate authority, we dismiss the appeal.

4. Facts are pari-materia the same in AY 2011-12 wherein the assessee was saddled with additions of Rs.10.80 Lacs on account of *alleged bogus purchases* in an assessment framed u/s 143(3) r.w.s. 147 on 13/02/2015. The first appellate authority estimated the income on presumptive basis. The impugned order is common order for both the years. Hence, our observation, conclusion as well as adjudication as for AY 2010-11 shall *mutatis mutandis* apply to this year also. Resultantly, the appeal stands dismissed.

5. Both the appeals stand dismissed.

Order pronounced in the open court on 16th September, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/09/2019
Sr.PS:-Jaisy Varghese



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आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**